4th Civil No.

IN THE
COURT OF APPEAL
STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION TWO

RICHARD WOOD, ON BEHALF OF HIMSELF AND OTHERS SIMILARLY SITUATED
Petitioner and Plaintiff,
vs.
SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
Respondent,

City of Palmdale, Rosamond Community Services District, Los Angeles County Waterworks District No. 40, Littlerock Creek Irrigation District, Palm Ranch Irrigation District, North Edwards Water District, Desert Lake Community Services District, California Water Service Company, Quartz Hill Water District, the City of Lancaster, the Palmdale Water District, and Phelan Pinon Hills Community Services District,
Real Parties in Interest and Defendants.

THE HONORABLE JACK KOMAR (RET.), JUDGE
SUPERIOR COURT OF SANTA CLARA COUNTY
[Sitting by order of the Judicial Council of California]
No. BC391869 (included in JCCP 4408)

PETITION FOR WRIT OF MANDATE IN THE FIRST INSTANCE, PROHIBITION OR OTHER APPROPRIATE RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES

LAW OFFICE OF
DANIEL M. O'LEARY
DANIEL M. O'LEARY, NO. 175128
10490 SANTA MONICA BOULEVARD
LOS ANGELES, CALIFORNIA 90025
(310) 481-2020

LAW OFFICES OF
MICHAEL D. MCLACHLAN
MICHAEL D. MCLACHLAN, NO. 181705
10490 SANTA MONICA BOULEVARD
LOS ANGELES, CALIFORNIA 90025
(310) 954-8270

Attorneys for Petitioner and Plaintiff Richard Wood

CERTIFICATE OF INTERESTED PERSONS OR ENTITIES

(California Rule of Court 8.208)

Certificate of Interested Entities or Persons

Court of Appeal Case Number:

Trial Court Case Number: **BC391869/JCCP4408**

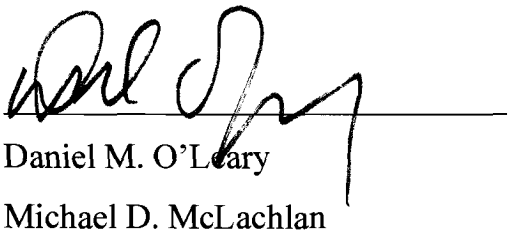
Case name: Richard Wood v. Los Angeles County Waterworks District No. 40, et al.

Name of Interested Entity or Person	Nature of Interest
Richard Wood	Plaintiff and Petitioner
Los Angeles County Waterworks District No. 40	Defendant and Real Party in Interest
City of Palmdale	Defendant and Real Party in Interest
Rosamond Community Services District	Defendant and Real Party in Interest
Littlerock Creek Irrigation District	Defendant and Real Party in Interest
Palm Ranch Irrigation District	Defendant and Real Party in Interest
North Edwards Water District	Defendant and Real Party in Interest

Dester Lake Community Services District	Defendant and Real Party in Interest
Quartz Hill Water District	Defendant and Real Party in Interest
California Water Service Company	Defendant and Real Party in Interest
City of Lancaster	Defendant and Real Party in Interest
Palmdale Water District	Defendant and Real Party in Interest
Phelan Pinon Hills Community Services District	Defendant and Real Party in Interest

Dated: March 22, 2010, and respectfully submitted,

LAW OFFICES OF MICHAEL D. MCLACHLAN
LAW OFFICE OF DANIEL M. O'LEARY

By: 

Daniel M. O'Leary
Michael D. McLachlan
Attorneys for Petitioner and Plaintiff
Richard Wood

TABLE OF CONTENTS

page

TABLE OF AUTHORITIES

Cases

Statutes

Rules of Court

INTRODUCTION

This petition raises a procedurally complex issue concerning the distinction between consolidated proceedings and coordinated proceedings. As a result of the trial court's misapplication of the distinction, Petitioner Richard Wood, on behalf of himself and a class of landowners in the Antelope Valley, faces the eradication of his right to pump groundwater for domestic use. Since this right is not only guaranteed by the California Constitution, but also provides the only way for approximately 4,500 people to obtain household water, Petitioner faces irreparable injury if the trial court's order consolidating various complex (and already coordinated) case is left to stand.

The Judicial Council has appropriately *coordinated* a number of separate lawsuits concerning groundwater pumping rights in the Antelope Valley. In Mr. Wood's particular case, he sought a declaration of rights on behalf of a class of property owners who pump less than 25 acre-feet per year of water for domestic use. And, specifically, he sought a declaration that the class of property owners has prior rights to groundwater as compared to public water purveyors who pump groundwater in the Antelope Valley. The public water purveyors claim that they have taken pumping rights from the landowners in Mr. Wood's class through prescription. Notably, Mr. Wood's complaint named only the public water purveyors as defendants: he has not sued other overlying landowners and he has not sued the United States.

The public water purveyors are themselves plaintiffs in another coordinated case: *Los Angeles County Waterworks District No. 40, et al. v. Diamond Farming Co., et al.*, filed under the Judicial Council Coordinated case number of JCCP 4408.[1] This complaint seeks a comprehensive

[1] The public water purveyors are technically cross-complainants in this case, although no underlying complaint exists. For some reason, the trial court ordered

adjudication of all rights to groundwater in the Antelope Valley. The requirement of a "comprehensive adjudication" stems from a federal law known as the McCarran Amendment, which provides for a waiver of sovereign immunity on the part of the United States for certain types of state court water rights adjudications. The central goal of this complaint is to satisfy the requirements of the McCarran Amendment so that the U.S. (as the owner of Edwards Air Force Base) can be a party subject to state court jurisdiction.

However, the public water purveyors chose to exclude from their "comprehensive adjudication" thousands of landowners who either do not currently pump groundwater, or pump it in what are essentially *de minimis* quantities for personal domestic use. Thus, at the trial court's direct invitation, Mr. Wood filed his complaint on behalf of the class of *de minimis* groundwater pumpers against the public water purveyors. The trial court certified Mr. Wood's class and class notice was provided.

Subsequently, the public water purveyors apparently had concerns that *coordination* of the Wood class action with their "comprehensive adjudication" complaint (and several other coordinated cases) would not satisfy the McCarran Amendment. So they moved to *consolidate* the already coordinated cases. The trial court granted this motion by way of an order that effectively puts class-members' groundwater pumping rights at issue without notice, without representation, and without any due process consideration. This silent attack on the rights of the class-members calls out for writ relief.

While the Wood class is appropriately coordinated with the other Antelope Valley groundwater cases, it cannot be consolidated.

---

that the public water purveyors' pleading seeking to establish a "comprehensive adjudication" be denominated as a cross-complaint.

PETITION FOR WRIT RELIEF

I.

BENEFICIAL INTEREST OF PETITIONER AND CAPACITIES OF RESPONDENT AND REAL PARTY IN INTEREST

Petitioner Richard Wood ("Petitioner" or "Wood") is the plaintiff and named class representative in the underlying action entitled *Richard A. Wood v. Los Angeles County Waterworks District No. 40, et al.,*, Los Angeles Country Superior Court Case No. BC391869 [included in JCCP 4408: *Antelope Valley Groundwater Cases*].

Respondent is the Superior Court for the State of California for the County of Los Angeles ("Respondent"). Respondent is now, and at all times mentioned in this Petition was, a duly constituted court exercising judicial functions in connection with this action.

Real Parties in Interest are defendants the City of Palmdale, Rosamond Community Services District, Los Angeles County Waterworks District No. 40, Littlerock Creek Irrigation District, Palm Ranch Irrigation District, North Edwards Water District, Desert Lake Community Services District, California Water Service Company, Quartz Hill Water District, the City of Lancaster, the Palmdale Water District, and Phelan Pinon Hills Community Services District. They are public water purveyors who pump groundwater from the Antelope Valley.

II.

RELIEF REQUESTED

Petitioner seeks this Court's review of Respondent's February 19, 2010 Order Transferring and Consolidating Actions for All Purposes, as it relates to Petitioner's previously-coordinated class action lawsuit. The Order subjects Petitioner and the class to myriad claims between them, other Antelope Valley landowners, and the federal government that (1) have never been framed by any pleading, (2) have not been the subject of class certification or notice, and (3) potentially leave the class in a position where it has to establish its rights to groundwater without any representation and with significant procedural disadvantages not shared by the other parties to the coordinated proceeding.

Petitioner further asks this Court to issue an immediate peremptory or alternative writ directing Respondent to vacate the Order and remove his lawsuit from any consolidated trial.

III.

STATEMENT OF FACTS

1. On June 17, 2005, the Judicial Council issued an order coordinating several cases concerning groundwater pumping rights in the Antelope Valley. The order of coordination venued the coordinated proceeding in the Superior Court of Los Angeles County, assigned it the JCCP Coordinated Proceeding number 4408, and specified the Fourth District Court of Appeal as the reviewing court. (Exhibit 1.)

2. On August 31, 2005, the Judicial Council assigned the Honorable Jack Komar as the coordination trial judge.

3. Subsequent to the coordination, other cases were filed and added-on to the proceeding. One of the add-on cases, *Wood v. Los Angeles County Waterworks District No. 40, et al.*, Los Angeles County Superior Court case number BC391869, was originally filed on June 2, 2008. (The currently operative First Amended Complaint is attached as Exhibit 2.) The Wood case sought a declaration of rights and to quiet title to groundwater between a class of small (by volume) pumpers of groundwater on the one hand, and a group of public water purveyors with groundwater pumping operations within the Antelope Valley on the other, along with monetary damages arising from the taking of groundwater by the public water purveyors.[2] The Wood case did not seek a basin-wide adjudication, did not seek to establish Wood's rights (or the rights of class-members) as against other landowners in the Antelope Valley, and did not name the federal government (the largest landowner in the Antelope Valley, by way of to Edwards Air Force Base).

4. On September 2, 2008, the Court certified the Wood class , defining the class as

[2] The cases included in the JCCP 4408 proceeding are William Bolthouse Farms, Inc. v. City of Lancaster, et al., Riverside County Superior Court case no. RIC 353840; Diamond Farming Co., et al., v. City of Lancaster, et al., Riverside County Superior Court case no. RIC 3444436; Diamond Farming Co. v. Palmdale Water District, et al., Riverside County Superior Court case no. RIC 344668; Los Angeles County Waterworks District No. 40 v. Diamond Farming Co. et al., Kern County Superior Court case no. S-1500-CV-254-348; Los Angeles County Waterworks District No. 40 v. Diamond Farming Co., et al., Los Angeles County Superior Court case no. BC 325201; Rebecca Lee Willis, et al., v. Los Angeles County Waterworks District No. 40, et al., Los Angeles County Superior Court case no., BC 364553 (class action); and Richard A. Wood, et al., v. Los Angeles County Superior Court case no. BC 391869 (class action).

"All private (i.e., non-governmental) persons and entities that own real propert within the Basin, as adjudicated, and that have been pumping less than 25 acre-feet per year on their property during any year from 1946 to the present. The class excludes the defendants herein, any person, firm, trust, corporation, or other entity in which any defendant has a controlling interest or which is related to or affiliated with any of the defendants, and the representatives, heirs, affiliates, successors-in-interest or assign of any such excluded party. The Class also excludes all persons and entities that are shareholders in a mutual water company."

(Exhibit 3.)

5. During the entire history of the JCCP 4408 proceeding, up to the present, the Wood class is a party to only to its own case. Thus, the only claims involving the Wood class are those the class has brought against the group of public water purveyors named as defendants in the class action complaint. Neither the public water purveyors nor the hundreds of other parties in the various cases within the coordinated proceeding have brought any claims against the Wood class.

6. The public water purveyors have filed a "cross-complaint" in the coordinated proceeding. This cross-complaint, which is not actually responsive to any complaint but stands on its own, seeks a "comprehensive adjudication" of all rights to groundwater in the Antelope Valley. The requirement of a "comprehensive adjudication" stems from a federal law known as the McCarran Amendment, 42 U.S.C. § 666, which provides for a waiver of sovereign immunity on the part of the federal government for certain types of state court water rights adjudications. The central goal of

this "cross-complaint" is to satisfy the requirements of the McCarran Amendment so that the federal government (as the owner of Edwards Air Force Base) can be a party. (The currently operative First Amended Cross-Complaint is attached as Exhibit 4.)

7. The public water purveyors' cross-complaint names a defendant-class of landowners who pump groundwater, similar in scope to the Wood class (which is nominally a plaintiff class). (See Exhibit 4.) The trial court certified this defense class. (Exhibit 5.) But after certification, the defense class of landowners has been, for all visible purposes, abandoned.

8. After the trial court certified the Wood class, potential members of the Wood class were provided notice of the class action. The class notice was served by mail and published in several area newspapers. It provided the following description of the claims to potential class members:

> "Under California law, property owners have a right to pump and use groundwater (water underneath the surface) on their land. In this case, however, the naturally available supply of water in the Basin may not be adequate to satisfy everyone who wants to use that water. Plaintiff Richard Wood brought this action to protect his right and that of other Antelope Valley landowners to pump and use the water under their properties and to obtain compensation for any wrongful taking of their property rights. Mr. Wood claims that he and other landowners have water rights which are superior to the rights of certain public water purveyors to use that water.

The public water purveyors claim that their historical pumping has given them superior water rights. If the public water suppliers win, your rights to use the groundwater under your property may be cut back. The Court has not yet ruled on these claims."

(Exhibit 6.) There has been no other notice to the class.

9. On July 15, 2009, the defendants in the Wood case, along with several other water purveyors who were parties in other coordinated cases, filed a joint motion styled "Motion to Transfer and Consolidate for All Purposes." (Exhibit 7.)[3] The motion requested the transfer of all actions pending in the Riverside and Kern County Superior Courts to the Los Angeles County Superior Court and a complete consolidation of all transferred and coordinated cases. The Wood class filed opposition to this motion. (Exhibit 8.) Additionally, two other groups of landowners filed oppositions to the motion. (Exhibits 9 and 10.)

10. During the period between the filing of the motion and the entry of the order granting the motion, various briefing was filed, both by the motion's proponents and its opponents. (Exhibits 11 through 18.)

11. The court held hearings on the motion to consolidate on August 17, 2009, October 13, 2009, and February 5, 2010. On February 19, 2010, the court issued the "Order Transferring and Consolidating Actions for All Purposes." (Exhibit 19.) (Referred to herein as "the

[3] The moving parties are: The City of Palmdale, Rosamond Community Services District, Los Angeles County Waterworks District No. 40, Littlerock Creek Irrigation District, Palm Ranch Irrigation District, California Water Service Company, Quartz Hill Water District, the City of Lancaster, and the Palmdale Water District.

Order.") True and correct copies of the hearing transcripts from these hearings are attached to the Petition as Exhibits 20 [August 17, 2009], 21 [October 13, 2009], and 22 [February 5, 2010].

12. The order contains considerable detail about the history of the coordinated proceeding and the difficulties caused by the attempt by the public water purveyors to satisfy the McCarran Amendment. But, for present purposes, two sections create the risk of irreparable injury to the interests of members of the Wood class. First, the Order consolidates the Wood case with six other cases, including one other class action and five non-class cases that collectively involve literally hundreds of parties with no pending claims against Petitioner or the class. Second, the Order specifies that "This order of consolidation will not preclude any parties from settling any or all claims between or among them, as long as any such settlement expressly provides for the Court to retain jurisdiction over the settling parties for purposes of entering a judgment resolving all claims to the rights to withdraw groundwater from the Antelope Valley Groundwater Basin as well as the creation of a physical solution if such is required upon a proper finding by the Court."

13. Both of these sections of the order have the effect of expanding the scope of the class's involvement in the coordinated proceeding without providing any notice to the class members. Both create a multitude of new claims between the class and other parties to other cases without either the class or any of these other parties having sought to sue each other, without any notice to the class. The combined effect is to leave the class exposed to adverse claims from other landowners without any class representation. Indeed, the Order effectively prevents class-wide representation on any issue outside of the public water purveyors'

prescription claims by stating "Costs and fees could only be assessed for or against parties who were involved in particular actions." (Exhibit 19, p. 3:13-14.) In other words, since the Wood complaint does not name the other landowner parties in the coordinated proceeding, the Wood class cannot recover fees or costs from efforts to protect their pumping rights from other landowners (with whom they arguably hold correlative rights to pump groundwater, up to some portion of the basin's sustainable yield).

PRAYER

Wherefore, Petitioner respectfully prays that:

(1) An Alternative Writ of Mandate be issued compelling the Superior Court of California for the County of Los Angeles (a) to vacate its Order dated February 19, 2010; or (b) to show cause at a time and place specified by this Court why it should not be so ordered;

(2) On return of the Writ and hearing on the Order to Show Cause, a Peremptory Writ of Mandate be issued under seal of this Court compelling the Superior Court to vacate its Order denying the summary adjudication motion, and to set a hearing to consider the motion on its merits;

(3) In the alternative, a Peremptory Writ of Mandate be issued compelling the Superior Court to vacate its Order denying the summary adjudication motion, and to consider the summary adjudication motion on its merits;

(4) Petitioner recovers his costs of filing this Petition; and

(5) Petitioner be granted such other and further relief as may be just and proper.

Dated: March 22, 2010, and respectfully submitted,

LAW OFFICES OF MICHAEL D. MCLACHLAN

LAW OFFICE OF DANIEL M. O'LEARY

By: _____

Daniel M. O'Leary

Michael D. McLachlan

Attorneys for Petitioner and Plaintiff

Richard Wood

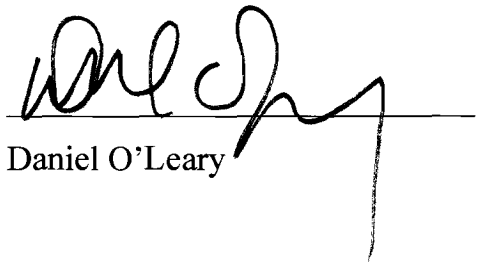
VERIFICATION

I, Daniel O'Leary, declare as follows:

I am an attorney of record and responsible for handling this action on behalf of Petitioner and Plaintiff Richard Wood. I have read the foregoing Petition and know its contents. The facts alleged are true and correct based on my own personal knowledge.

I am verifying this Petition in place of Petitioner because the facts stated above either involve proceedings that took place in court in my presence or involve legal documents and exhibits that are in my file and which were prepared by me or reviewed by me.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct. Executed this 22th day of March 2010, at Los Angeles, California.



Daniel O'Leary

MEMORANDUM OF POINTS AND AUTHORITIES

I.

WRIT REVIEW IS APPROPRIATE IN THIS CASE

Writ review of the Order is appropriate because Petitioner has no adequate remedy at law from the erroneous ruling. Furthermore, the key distinction between coordination of complex actions and consolidation is novel and directly affects not just the members of the Wood class but thousands of other landowners in the Antelope Valley who either pump groundwater or have a right to do so.[4]

A. Petitioner Has No Adequate Remedy At Law.

Because the Order is not directly appealable, Petitioner has no adequate remedy at law. The decision to consolidate is one of discretion with the trial court. However, where that discretion is abused, a consolidation order can be reversed by a reviewing court. (*Todd-Stenberg v. Dalkon Shield Claimants Trust* (1996) 48 Cal.App.4th 976.)

Here, the effect of the Order on the Wood class is potentially severe. But its ultimate effects on the class will not be known until a substantial amount of time and money has gone into further litigation of the underlying proceeding. Consider: The Order establishes an Antelope Valley-wide declaratory relief proceeding to determine "an *inter se* adjudication of rights of all the parties to these consolidated cases to withdraw groundwater from the Antelope Valley Groundwater Basin. (Exhibit 19, p. 4:5-6.) If the trial court determines the basin is currently overdrawn, the effect of the Order will ultimately be a physical solution that ramps down groundwater

[4] To give a sense of the size of the coordinated proceeding, the trial court maintains a website for the filing of all documents (http://www.scefiling.org/cases/casehome.jsp?caseId=19). As of March 10, 2010, 3,449 documents had been filed electronically through the website.

pumping to a sustainable level. The ramping down will involve competing claims to groundwater between the class and other overlying landowners.

While a physical solution may be a laudable goal (and may well be the result of the consolidation proceeding), no mechanism currently exists outside of the Order for the ramping down to occur on a class-wide basis.[5] The class was pled and certified as to claims between class members and the public water purveyors—not class members and other overlying property owners. The class has not received notice or an opportunity to be heard that their rights with respect to other property owners are at issue.

Even worse, the class has no mechanism to litigate against other property owners. The Order specifically states that "Costs and fees could only be assessed for or against parties who were involved in particular actions." (Exhibit 19, p. 3:12-13.) Thus, since the class and other property owners are not jointly parties to any single one of the cases included in the Order, the class would be forced to try and protect their pumping rights against other land owners with no means to capture fees or costs should they prevail. As a practical matter, this would leave the class without representation. The Order, then, puts the class into an adversarial posture towards the other landowners in the Antelope Valley but then starves the class of any mechanism by which it successfully litigate.

This situation could not occur were the cases only coordinated, as opposed to consolidated. Under coordination, the members of the Wood

---

[5] In order for the class to participate in a physical solution to a groundwater shortage in the Antelope Valley as a class (as opposed to participating as several thousand individual parties), class clams would need to be set up and certified as actually adverse to the other overlying landowners. That has not happened. In fact, given the differing conditions within the Antelope Valley (an area of approximately 900 square miles), one could reasonably argue that it would be impossible to deal with *de minimis* pumpers on a class basis in a physical solution. But the Order short-circuits these important steps in the process by placing a class certified for one purpose in a brand new posture, adverse to parties that it never sued, without notice to the class.

class could not face the loss of pumping rights to other landowners, at least not without further procedural steps intended to provide notice of the actual rights at issue.[6]

B. The Order Involves an Important and Novel Question of Law.

The Order notes that "there is a dearth of case law on the issue of consolidation in coordinated cases . . ." (Exhibit 19, p. 4:7-8.) The reason should be obvious: they are different and ***exclusive*** procedures for case management. Indeed, the Judicial Council Fact Sheet on coordinated proceedings notes that coordination and consolidation are different procedures, and "Coordination brings together civil actions pending in different counties. Consolidation unites multiple related cases that are pending in the same county." (Judicial Council of California Fact Sheet, November 2009, "Civil Case Coordination.")[7] Since the coordinated action were initially filed in separate counties, coordination is appropriate; consolidation is not.

This is echoed by the Rules of Court, which draw a *bright-line distinction* between consolidation of non-complex actions (Rule of Court 3.500) and coordination of complex actions (Rules of Court 3.501, *et seq.*) These Rules of Court, which were promulgated pursuant to the Legislative instruction included in Code of Civil Procedure section 403, make clear that complex actions should not be consolidated.

---

[6] For example, the public water purveyors could have pursued the defense class defined in their cross-complaint. That cross-complaint, unlike the Wood complaint, seeks a complete and comprehensive adjudication of all groundwater rights, including an adjudication of the correlative rights that would exist between overlying landowners if the basin is overdrawn.

[7] Available at http://www.courtinfo.ca.gov/reference/documents/factsheets/civcoord.pdf

The trial court anticipated this problem: as justification for the consolidation, the Order states "The California Rules of Court 3.451 [sic, should be 3.541] requires active management by the coordination trial judge and specifically provided for separate and joint trials of causes of action and issues, as the court in its discretion might order." (Exhibit 19, p. 4:9-12.) The trial court has the quote exactly right—the *coordination* rules give it broad powers to manage the cases *within the coordinated proceeding*. It does not have the power under these rules to consolidate complex cases. The fact that the trial court, along with the public water purveyors, feel that coordination is not sufficient to comply with the federal McCarran Amendment does not alter the basic procedural landscape under which the Wood class can be forced to litigate. The Order improperly impairs the class's procedural rights and should, therefore, be overturned.

The basic procedural rules relating to the coordination of complex actions filed in different counties in California are well settled. Under California Civil Procedure Code section 404 *et seq.*, such cases will be coordinated, *i.e.*, assigned to a single judge, if they share a common question of law or fact and the coordination judge determines that the factors set forth in Code of Civil Procedure section 404.1 have been satisfied. Put differently, "[c]oordination is a procedure for securing centralized case management of [complex] actions pending in different courts that share a common question of fact or law." (Cal. Judges Benchbook, Civil Proceedings Before Trial, § 2.89 (2nd ed. 2008.))

Here, all the cases included in the coordinated proceeding, including the Wood case, are complex. The Order concedes as much. (Exhibit 19, p. 2:12.) Coordination—and not consolidation—is all the law allows with respect to complex actions filed in different counties.

"Coordination by transfer and consolidation is available ***only*** for actions which are 'not complex.'" (2-32 Mathew Bender Practice Guide:

California Pretrial Civil Procedure 32.15 (2009) (emphasis added). Under California law, all "'complex' cases must be 'coordinated' with each other" and may not be consolidated under Code of Civil Procedure section 1048(a). (*See* Weil & Brown, *Civ. Pro. Before Trial*, § 12:345 (Rutter Group 2009). Thus, the law is clear that consolidation is not proper for complex actions.

Because the Order consolidates complex actions, including the Wood class action, it is improper.

II.
CLASS ACTIONS SHOULD NOT BE SUBJECT TO CONSOLIDATION

A. Consolidation of the Wood Class Action With the Non-Class Action Cases in the Coordinated Proceeding Is Prejudicial to the Class.

The Wood class action should not be consolidated with the other cases in the coordinated proceeding because (1) all the cases are complex, and (2) they do not share the same parties or claims as the plethora of actions flowing from the "main action."

By their very nature, class actions are complex, and cannot be consolidated under the applicable procedural law. (*Weil & Brown*, ¶¶ 12:345, 12:405; C.C.P. §§ 403 and 404.) There is no precedent for merging a class action into a non-class case.

There are two types of consolidation under California law. "[A] complete consolidation resulting in a single action, and a consolidation of separate actions for trial." (*Sanchez v. Super. Ct.*, (1988) 203 Cal. App. 3d 1391, 1396.) Complete consolidation or consolidation for all purposes is only appropriate "where the parties are identical and the causes could have

been joined." *Id.*; *see also* Weil & Brown, § 12:341.1. Here, the parties and causes among the coordinated complaints are not identical and, while the individually named parties have been joined to the public water purveyors' cross-complaint, the Wood class has not. Complete consolidation—which the Order purports to create—is not available.

The Order seeks to establish consolidation for purposes of trial of all issues necessary for a comprehensive adjudication of groundwater rights, notwithstanding that no complaint actually seeks such a trial. The closest is the public water purveyors' cross-complaint: it seeks a comprehensive adjudication, but fails to include all necessary parties. The public water purveyors named and obtained certification of a defense class that might have allowed the cross-complaint to include all necessary parties, but the defense class has been abandoned. Thus, the Order creates a cause of action for trial that would not otherwise exist.

Moreover, the Order creates this cause of action by including the Wood class action *after* class members had received notice of a different proceeding. This raises significant due process concerns because it will allow the trial court to adjudicate class members' pumping rights on a class basis without notice to the class or an opportunity for class members to be heard on the cause at issue. (*See, e.g., Hanlon v.Chrysler Corp.* (9th Cir. 1992) 150 F.3d 1011, 1020.)[8]

Here, the class complaint, the class certification order, and the class notice were all based on the need for small groundwater pumpers to defend

[8] While not final as of this writing, *Hesse v. Sprint Corporation* (March 11, 2010) 2010 WL 790340, speaks to this point: Without adequate representation, a resolution of class claims "cannot satisfy due process as to all members of the class." (*Id.*, *4.)

against the public water purveyors' claims of prescription.[9] The class notice informs class members as much. So the specific problem with the Order is that it expands the scope of the class action without notice to the class members. And it does so in a particularly unfair manner since it denies the class any ability to recover fees and costs from other overlying landowners. [10]

B. Consolidation Denies the Class Members Due Process.

More generally, the Order fails to conform to basic notions of due process. It is an unassailable point of law that notice and an opportunity to be heard are core requirements of a trial court's jurisdiction. (*See e.g., Environmental Coalition of Orange Co., Inc. v. Local Agency Foundation Com.* (1980) 110 Cal.App.3d 164, 173.) But here, the thousands of land owners in the Wood class have not received notice that they are now parties to an *inter se* adjudication of all groundwater rights in the Antelope Valley. They have, admittedly, received notice that they are parties to an action to determine whether the Valley's public water purveyors have obtained prescriptive rights. But that is far different to the action contemplated by the Order. Indeed, the Order specifically notes that consolidation will result in a "comprehensive adjudication and a judgment that will affect all parties. Complete consolidation will permit these matters to proceed as an

---

[9] The Wood class is nominally a plaintiff class, but it exists on a substantive level to defend against the public water purveyors' claims. Although the class could receive monetary compensation for a taking of their water, the class would be better served by maintaining the status quo. In other words, there is no form of affirmative relief for the class that would be an improvement on the class members' current pumping.

[10] Another problem the Order has is that it leaves unclear the ultimate form of judgment in the class action. If the class action settles by way of a judgment that is made part of a larger judgment, all parties to the judgment would have standing to object to the class settlement.

inter se adjudication of the rights of all parties to these consolidated cases to withdraw groundwater from the Antelope Valley Groundwater Basin." (Exhibit 19, p. 4:3-7.)

The trial court clearly intends to enter a comprehensive judgment. The class members have not received notice nor had an opportunity to be heard regarding a comprehensive adjudication of their groundwater rights. From the class's perspective, the Order has the effect of leading to a judgment between the class members and non-parties to the class members' lawsuit. This violates federal and state due process. (*Lambert v. People of the State of California* (1957) 355 U.S. 225, 78 S.Ct. 240, 2 L.Ed.2d 228; *Bronco Wine Co. v. Frank A. Logoluso Farms* (1989) 214 Cal.App.3d 699, 703.)

While the public water purveyors may have legitimate reasons to seek a comprehensive adjudication (and keep the United States as a party), those reasons cannot overcome the class members' right to a fair process. The Order elevates the public water purveyors' desire over the class members' fundamental rights. Therefore, it must not stand.

CONCLUSION

Wherefore, Petitioner respectfully prays that a

(1) An Alternative Writ of Mandate be issued compelling the Superior Court of California for the County of Los Angeles (a) to vacate its Order dated February 19, 2010; or (b) to show cause at a time and place specified by this Court why it should not be so ordered;

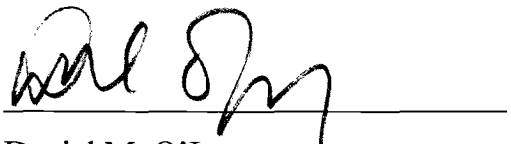
(2) On return of the Writ and hearing on the Order to Show Cause, a Peremptory Writ of Mandate be issued under seal of this Court compelling the Superior Court to vacate its Order Transferring and Consolidating Actions for All Purposes;

(3) Petitioner recovers his costs of filing this Petition; and

(4) Petitioner be granted such other and further relief as may be just and proper.

Dated: March 22, 2010, and respectfully submitted,

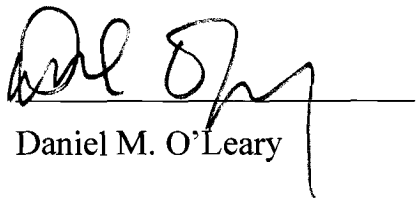
LAW OFFICES OF MICHAEL D. MCLACHLAN
LAW OFFICE OF DANIEL M. O'LEARY

By: 

Daniel M. O'Leary
Michael D. McLachlan
Attorneys for Petitioner and Plaintiff
Richard Wood

CERTIFICATATION OF WORD COUNT

I certify that the foregoing Petition for Writ of Mandate, Prohibition or Other Appropriate Relief; Memorandum of Points and Authorities, including tables, contains no more than 5,199 words as determined by the word count of the computer program used to prepare the brief.



Daniel M. O'Leary

PROOF OF SERVICE BY PERSONAL DELIVERY

I am over the age of eighteen years and not a party to this action. My business address is 10490 Santa Monica Boulevard, Los Angeles, CA, 90025. On March 24, 2010, I caused to be served via attorney service, DDS Legal Support, the:

PETITION FOR WRIT OF MANDATE IN THE FIRST INSTANCE, PROHIBITION OR OTHER APPROPRIATE RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES

by delivering copies thereof to:

The Hon. Jack Komar Santa Clara County Superior Court c/o Clerk, Rowena Walker 191 North First Street San Jose, CA 95113	The Hon. Jack Komar Los Angeles County Superior Court 111 North Hill Street Los Angeles, CA 90012

Further, I posted the documents to the website http://www.scefiling.org, a dedicated link to the Antelope Valley Groundwater Cases for service of process on all parties. This posting was reported as complete and without error.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 24, 2010, at Los Angeles, California.

Michael D. McLachlan